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Claflin et al. v. Ambrose, 37 Fla. 78; *Richardson & Co. v. Subers*, 82 Ga. 427; *Minneapolis Stock Yards & Packing Co. v. Halonen*, 56 Minn. 469; *Levi v. Rothschild*, 69 Md. 348; *Stevens v. Carson*, 30 Neb. 544; *Melick v. Varney*, 41 Neb. 105; *Herzog v. Weiler*, 24 W. Va. 199; *Gettlemann v. Gitz*, 78 Wis. 439; *Hutchinson's Ex'r. v. Boltz*, 35 W. Va. 754; *Peeler v. Peeler*, 109 N. C. 628; *Seeds v. Kahler*, 76 Pa. St. 262; *Grant v. Sutton*, 90 Va. 771; *Seitz v. Mitchell*, 94 U. S. 580. The presumption, according to the view of these cases, is that such a transfer is without consideration on the part of the wife. *Burt v. Timmons*, 29 W. Va. 441. But according to other cases there is no such presumption. *Rhodes v. Wood*, 93 Tenn. 702. The view taken by many courts is that although dealings between husband and wife are to be carefully scrutinized, still they are to be tested by the same principles as a conveyance by a debtor to a stranger when brought into question as fraudulent against creditors. *Kaufman v. Whitney*, 50 Miss. 108. In *Winslow v. Gilbreth*, 50 Me. 90, the case was reversed because the burden of proving the transaction bona fide was placed on the wife. The court there held that when a creditor of the husband alleges facts authorizing the seizure of property, the title to which is in the wife, he must establish their existence by proof and that the burden of proof is on him. Supporting this view are *Wolf v. Chandler*, 58 Ia. 569; *Gilbert Hedge & Co. v. Glenny*, 75 Ia. 513; *Farrell v. O'Neil*, 22 La. Ann. 619; *Chaffe & Sons v. DeMoss*, 37 La. Ann. 186; *Cox v. Scott*, 68 Tenn. 305; *Grant v. Ward*, 64 Me. 239; *Ettlinger v. Kahn*, 134 Mo. 493. In *Hussey v. Castle*, 41 Cal. 239, it was held that there is no presumption that a conveyance made to the wife before the recovery of judgment against her husband is fraudulent. Few courts, however, recognize any distinction, as regards the burden of proof, between cases in which the conveyance is made before, or after, the recovery of judgment, and it has been held that the burden of proof is still on the creditor attacking the conveyance to the wife, although the conveyance was not made until after the recovery of judgment against the husband. *Coyne v. Sayre*, 54 N. J. Eq. 702. It would seem to be more logical to hold, in accordance with these latter cases, that the burden of proving fraud should be placed on the person alleging conveyances of property to be fraudulent, even when the person to whom the conveyance is made is the wife of the debtor.

FIRE INSURANCE—FORFEITURE OF POLICIES—“OTHER INSURANCE”—Two POLICIES IN THE SAME COMPANY.—Plaintiffs' stock of goods was worth about \$4,000. They took out a policy with the defendant on the same for \$1,500 by the terms of which permission was granted for \$1,500 “other” insurance. Afterwards they took out another policy in the defendant company on the same risk for \$500, with a similar permission for \$2,000 “other” insurance. Both policies had provisions avoiding them in case of over-insurance. Plaintiffs then took out a policy for \$1,200 on the same risk in another company. Held, that the two policies were avoided by procuring a total insurance in excess of the largest amount permitted under either of them, the permits

not being cumulative. *De Loach & Co. v. Aetna Ins. Co.* (1908), — Ga. App. —, 62 S. E. 473.

Other insurance was here defined to be "insurance in addition to that effected by the policy itself" and was held to include the prior policy. This was a correct holding. *Georgia Home Ins. Co. v. Campbell*, 102 Ga. 106; *Behrens v. Germania Ins. Co.*, 58 Ia. 26. The Supreme Court of Texas goes even farther and holds that the term "total concurrent insurance" includes the amount of the policy on which it is written. *East Texas Fire Ins. Co. v. Blum*, 76 Tex. 653. But no case has been found where the prior policy was issued by the same company. A consideration of the object in limiting the amount of concurrent insurance shows that the rule should be the same even in this case, where no estoppel intervenes. Insurance is an aleatory, not a wagering contract. To secure its integrity as such, the insured must be made to lose something in case of a total loss, which can only be accomplished by limiting the amount of insurance to a sum smaller than the value of the property insured. COOLEY, BRIEFS ON THE LAW OF INSURANCE, Vol. 2, p. 1831. The permits were not cumulative, for to so hold would allow insurance in excess of the value of the goods insured. The court was correct, then, in holding the policies avoided; the insurance exceeded either permit. But it would seem that the court enunciated an erroneous rule to apply to cases of this kind. The proper rule, it is believed, would give effect to the latter permit only. It is to be noted in the principal case that the total aggregate insurance allowed by the last policy was smaller than the amount allowed under the first. The insurer may have wished increased protection against bad faith upon an assumption of a larger proportion of the risk. It is a well settled principle of contract law that a subsequent agreement between the same parties concerning the same subject matter discharges the prior agreement in so far as such prior agreement is necessarily inconsistent with the subsequent agreement. 9 Cyc., p. 506. The permits were not cumulative. Effect could be given to only one of them. In other words, they were necessarily inconsistent with each other. The subsequent agreement should then control.

INSURANCE—SUBROGATION—ACCIDENT INSURANCE.—Plaintiff met with an accident on defendant's railroad. The accident being covered by his accident insurance policy, he was paid the insurance. In a suit to recover damages for the negligent injury, *held*, that no right to subrogation exists in favor of accident insurers, therefore it is not necessary that the insurer be made a joint plaintiff. *Gatzweiler v. Milwaukee Electric Ry. & Light Co.* (1908), — Wis. —, 116 N. W. 633.

The right of the accident insurer to subrogation to the rights of the insured against his negligent injurer has been judicially passed upon in but one American decision previous to the principal case. *Aetna Life Insurance Co. v. Parker*, 30 Tex. Civ. App. 521, affirmed, 96 Tex. 287. The principal case cites and follows this decision. In the Texas case the insured had settled with the wrongdoer, and in a suit on the policy the insurer insisted that this fact released them from the policy, as it destroyed their right